

MINUTES
Crested Butte Town Council
Regular Meeting
Crested Butte Town Hall
Monday July 17, 2006

Mayor Alan Bernholtz called the meeting to order at 7:00 p.m. Council members present: Ron Chlipala, Skip Berkshire, Leah Williams, Billy Rankin and Margot Levy. Absent: Bill Coburn. Staff present: Acting Town Manager Lois Rozman, Town Attorney Laura Magner, Town Clerk Eileen Hughes, Building Official Bob Gillie, Building Assistant Molly Minneman (for part of meeting) and Parks and Recreation Director Bob Piccaro (for part of the meeting).

1. **CONSENT AGENDA**

- A) Approval of Minutes of July 5, 2006 Regular Council Meeting.
- B) Special Event Permit- Crested Butte Trail Runners-Grin and Bear It Trail Run- July 22, 2006-Red Lady Ave, 4th Street, Belleview Ave, 3rd Street, and 2nd Street.
- C) Approval of Final Plat for Wolverine Townhouses-Paradise Park Subdivision
- D) Approval of Final Plat for Peeler Townhouses-Paradise Park Subdivision
- E) Approval of Final Plat for Redwell Townhouses-Paradise Park Subdivision

Levy moved and Chlipala seconded to approve the consent agenda. Roll call vote taken with all voting yes. **Motion passed unanimously.**

2. **PUBLIC COMMENTS**

Crested Butte resident David Rothman expressed concern about noise in town. He gave council copies of the City of Aspen's noise ordinance and asked council to consider a comprehensive noise ordinance.

Crested Butte Resident Don Norgard said the 15 MPH speed limit sign at the south entrance to town coming down the hill on Highway 135 is not very visible.

3. **STAFF REPORTS**

Rozman: Introduced new Town Manager Susan Parker (who was observing the council meeting) and new Parks and Recreation Director Bob Piccaro. Rozman also noted that new Public Works Director Eddy Balch recently started his job with the town.

Hughes: Noted her memo to council dated July 13, 2006 regarding liquor licenses. Council agreed to discuss the topic later in the meeting under New Business.

4. **PUBLIC HEARINGS**

- A) Hearing of Appeal by Doug and Phoebe Pederson of Board of Zoning and Architectural Review (BOZAR) Decision Denying Application for Conditional Use For a Bar/Restaurant; Denying Approval of Proposed Site Plan; and Denying

the Request to Make Payment in Lieu of Four Parking Spaces at Historic Residence Located at 309 Third Street, Block 21, Lot 5 in the B-3 Zone.

Town Attorney Laura Magner stepped down due to a conflict of interest and left the room. Attorney Rod Landwehr took over as the Town's legal counsel for the appeal. Town Clerk Hughes confirmed that proper public notice of the appeal was given.

Staff presentation by Building Official Bob Gillie and Building Assistant Molly Minneman.

Gillie noted that the B-3 district allows bars and restaurants as a conditional use. Minneman reviewed BOZAR's reasons for denying the conditional use as outlined in her memo to council dated July 11, 2006. Minneman explained that BOZAR found that three conditional use criteria could not be satisfied: items #1(h); item #4 and item #6 of conditional use criteria in section 15-2-16 of the Town Code.

Minneman explained that BOZAR was concerned about adverse impacts on the neighbors.

Appellant Phoebe Pederson gave a lengthy presentation and urged council to grant the request for conditional use. Pederson said the request could be granted with or without conditions. Pederson noted the property is only ½ a block off of Elk Ave and several established businesses are already located on the north side of the alley, which borders 309 Third Street. Pederson quoted from the Town's Land Use Plan noting that commercial development is encouraged in town. Pederson noted the property is in the B-3 zone and that it's a miscalculation to call the area residential since there are many commercial properties in the neighborhood as well as a public building (the fire station) nearby.

Pederson offered a number of conditions she was willing to place on her property including:

- Removal of outdoor seating (patio).
- Limiting the hours of operation to midnight (7 days a week).
- Locating an entrance door on the alley.
- Insulating the north facing wall.
- North facing windows do not open and heavy curtains installed on north windows.
- No live bands, pool table or TV.
- Trash will be stored in combination with another business in a bear proof enclosure.

Pederson also entered maps and exhibits into the record.

Landwehr explained if conditional use is granted with certain conditions that the conditions would be recorded as a restrictive covenant attached to the property and the conditions would apply to future owners.

Landwehr noted that letters submitted to council and BOZAR both for and against the project, are entered into the record including letters submitted to council at the meeting from Peter Bridges and John Penn.

Mayor Bernholtz opened the public hearing.

Attorney Jim Starr, representative for neighbors Don and Cindy Hemple and Kimberly and Jim Barefield, gave a lengthy presentation arguing against the granting of a conditional use. Starr showed a map indicating the location of 40 residential owners who expressed misgivings about the project. Starr argued that the central issue being debated is if the location of a bar/restaurant 12.5 feet from a residential use is an adverse impact; and if the bar/restaurant will create significant impacts on the neighborhood.

Starr argued that no matter how many conditions are placed on the property the conditions cannot stop noisy people from walking on the street in the area and he said it's the neighbors who will end up enforcing any conditions placed on the property. He also indicated that a restrictive covenant on the property could be deleted in the future if requested. Starr presented four photos for the record showing the proximity of the proposed project to the adjacent residential house.

The following individuals spoke against granting conditional use and indicated support for Starr's arguments regarding the project:

Crested Butte resident Don Hempel, Last Resort Bed and Breakfast owner Rita Payne, Property owner Sarah Riopelle, Crested Butte resident Kimberly Barefield, Crested Butte resident Joan Windsor, Crested Butte resident David Rothman, Crested Butte resident Don Bunnell, Crested Butte property owner Balie Griffith, Crested Butte resident Don Haver and Crested Butte property owner Joe Saya.

The following individuals spoke in support of granting a conditional use: Crested Butte business owner and resident Adria Ellis, Crested Butte business owner and resident Davin Sjoberg, Crested Butte business owner and resident Alison Keagle, Crested Butte resident Kate Seeley, Crested Butte business owner and resident Annette Akelson, Crested Butte resident and business owner Sigrid Cottrell, Crested Butte resident Chris Cottrell, Crested Butte resident Angie Hornbrook, Crested Butte resident and business owner Brian Schneider, Crested Butte resident and business owner Jay Harris.

Those who spoke in support argued that there already is a lot of noise in the core area of town; that residents who choose to live in the B-3 district are making a choice to locate in the core area; noise and activity are part of the downtown experience; and the proposed business will enhance the core area of town.

BOZAR members Melissa Belz and Keith Bauer also commented about the proposal.

Bernholtz noted that a show of hands from the audience indicated roughly a 50/50 split of those opposed and those in favor of the project.

Bernholtz closed the public hearing.

Council Discussion

Rankin explained that he disagreed with BOZAR's finding that the project will create significant noise (item #4 of conditional use criteria in section 15-2-16). Rankin said people are complaining about existing noise. Additionally, Rankin said the project will not have a significant adverse impact on the uses of adjacent property (item #6 conditional use criteria) Rankin indicated that he would vote to overturn BOZAR's denial of conditional use.

Williams explained she is considering the immediate neighborhood and believes BOZAR appropriately applied the conditional use criteria. Berkshire also indicated that he would support BOZAR noting that the applicant cannot control the behavior of patrons and the establishment would have adverse impacts on the neighborhood.

Levy indicated support for Rankin's comments and noted that the conditions the applicant offered to put on the property will mitigate the impacts. Chlipala voiced concern about the impacts and the ability to mitigate the impacts. Chlipala said he would vote to uphold BOZAR.

Bernholtz indicated support for granting a conditional use, noting that the conditions the applicant offered to place on the property, such as eliminating the patio, will mitigate the impacts. Bernholtz also said the location in the B-3 is appropriate. Bernholtz closed council discussion.

Rankin moved and Levy seconded to overturn the Board of Zoning and Architectural Review decision denying application by Doug and Phoebe Pederson for conditional use for a bar/restaurant at 309 Third Street based on the following findings of facts regarding Section 15-2-16 of the Town Code concerning conditional use criteria. The applicants have successfully demonstrated that they will mitigate the concerns regarding item 1 h of the conditional use criteria regarding similar land use in the neighborhood; item # 4 by mitigating noise impact in the neighborhood and item # 6 the applicants have demonstrated that they will not create significant adverse impacts. BOZAR's decision is overturned with the following conditions as proposed by the applicant at the appeal hearing:

- No outdoor seating
- Sealing of windows on the north side
- Insulation of north walls
- Heavy drapes on north windows
- Limiting hours to midnight every day
- Combining trash with the Ginger Café in a bear-proof structure
- No live music, no TV, no pool tables
- Drapes across north facing windows

Roll call vote taken with Levy, Rankin and Bernholtz voting "Yes" and Berkshire, Williams and Chlipala voting "No." **Tie Vote Motion fails.**

Berkshire moved and Chlipala seconded that the secondary issues being appealed by Doug and Phoebe Pederson concerning denial of approval by the Board of Zoning and Architectural Review of proposed site plan at 309 Third Street and denying the request to make payment in lieu of four parking spaces are moot based on the council's denial of the appeal to overturn BOZAR's decision regarding conditional use. Roll call vote taken with all voting yes. **Motion passed unanimously.**

Magner returned to the council chambers.

Council agreed to consider one item under Other Business at this time.

A) Consideration of Approval of Larkspur Subdivision Access Easement.

Mike Wright was present for the discussion.

Bernholtz explained that he and Town Staff had drafted a proposed agreement extending access to Mike and Renee Wright's parcel located south of Brush Creek Road. The agreement states that Mike Wright agrees to locate future development to the least visible portion of his parcel, which is the western 2/3 of the parcel. The agreement will be further refined and allows access to the 13 acre parcel, the easement is 80 feet wide, the same width as the easement to the Larkspur Subdivision located to the north.

Bernholtz explained that the mayor of Mt. Crested Butte indicated support for the proposed access easement, which will provide access to the Larkspur subdivision as well as Wright's parcel. (The easement is being considered by several entities who jointly own the property including Mt. Crested Butte and Gunnison County).

Council concurred with the terms of the draft agreement and also concurred that they are approving the access easement in good faith with the agreement to be further refined and finalized by the end of July.

Levy moved and Rankin seconded to approve the long version of the proposed 80 foot wide access easement to the Larkspur Subdivision and Mike and Renee Wright's parcel off of Brush Creek Road, as discussed at the council meeting, with the agreement being fleshed out by Mike Wright and Town Planner John Hess during the month of July. Roll call vote taken with all voting yes. **Motion passed unanimously.**

5. **NEW BUSINESS**

A) Ordinance No. 14, Series 2006- An Ordinance Amending the Zoning and Land Use Ordinance to Prohibit Certain Uses on the Ground Floor in the "B-1" Business District and the "B-3" Business District.

Bernholtz read the title of the ordinance. Council discussed setting the ordinance for public hearing and also referring the ordinance to the Board of Zoning and

Architectural Review for consideration. Staff noted a revised ordinance was distributed to council at the meeting.

Council directed staff to provide council with a bulleted list of the content of the revised ordinance.

Levy moved and Williams seconded to set Ordinance No. 14 for public hearing at the first council meeting in August and to refer Ordinance No. 14 to BOZAR for consideration in July.

Council agreed to schedule a work session for 10:30 a.m. on August 8, 2006 to discuss Ordinance No. 14.

B) Resolution No. 8, Series 2006- Resolution in Support of the Plug-In Partners National Initiative to Encourage Auto Makers to Mass Produce Plug-In Hybrid Vehicles.

Bernholtz read the title of the resolution.

Levy moved and Rankin seconded to approve Resolution No. 8. Roll call vote taken with all voting yes. **Motion passed unanimously.**

C) Discussion of Proposed Gunnison County Revisions to Land Use Resolution Concerning Solid Fuel-Burning Devices.

Rozman noted memo to council dated July 13, 2006 from Town Planner John Hess and Building Official Bob Gillie. Rozman explained that staff supports the recommended revisions and a draft letter to the Board of County Commissioners was included in the council packet

Levy moved and Chlipala seconded to send letter to the Gunnison County Board of Commissioners as drafted regarding revisions to the Land Use Resolution regarding solid fuel burning devices. Roll call vote taken with all voting yes. **Motion passed unanimously.**

6. LEGAL MATTERS

Magner announced her resignation effective the end of August, 2006. Magner suggested that her successor start August 21, 2006 to allow for overlap. Council directed Magner to place an advertisement for the position in the Crested Butte News and the Gunnison Country Times and to post the job announcement on the Colorado Municipal League attorney list serve. Council also agreed to discuss the new selection process for the new Town Attorney at the August 8th council meeting.

COUNCIL REPORTS AND COMMITTEE UPDATES

Williams:

- Reported on the Gunnison County Housing Authority.

Levy:

- Reported on the West Elk Loop Scenic Byway Committee. Levy explained that the committee would like the town to send a letter to the

Department of Energy requesting that the time period be extended for public comment on a proposed uranium mine near Nucla, Colorado. Council directed staff to write the letter.

Chlipala:

- Reported on Mt. Express Board meeting.

Berkshire:

- Noted copy of a resolution in the council packet, which was approved by the 2006 Ground Transportation Task Force—A Subcommittee of the Gunnison Valley Rural Transportation Authority.

OTHER BUSINESS TO COME BEFORE COUNCIL

Hughes discussed Special Event Liquor Licenses/ Consent Agenda and Transfer of Liquor Licenses as noted in her memo to council dated July 13, 2006.

Council directed staff to place special event liquor licenses on the consent agenda for events that have been approved in the past and to place new special event liquor licenses on the regular agenda.

Council also directed staff to continue to place liquor license transfers on the council agenda (rather than approve administratively).

Rozman clarified that the council's capital budget work session will be held on August 14, 2006 from 9 a.m. to 3 p.m.

Bernholtz suggested that the August 9th council meeting be changed to a daytime meeting on August 8th because Coburn is unable to attend the August 9th meeting.

Council agreed to hold a work session on August 8, 2006 from 10:30 to 11:30 on Ordinance No. 14 (horizontal zoning).

Williams moved and Levy seconded to schedule a regular council meeting on August 8th from 1-4 p.m. with the work session at 1 p.m. Roll call vote taken with all voting yes. **Motion passed unanimously.**

Bernholtz adjourned the meeting at 10:19 p.m. by unanimous consent.

Alan Bernholtz, Mayor

Eileen Hughes, Town Clerk